

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	CC Docket. No. 95-116
	)	
Telephone Number Portability	)	RM 8535
	)	
	)	FCC 96-286

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PETITION FOR CLARIFICATION

The National Exchange Carrier Association, Inc. (NECA)<sup>1</sup> files this petition to seek clarification that the Telephone Number Portability Report and Order, released July 2, 1996,<sup>2</sup> in conjunction with Section 251(f) of the Communications Act, does not require the provision of number portability in areas that will be slow to see competition and that will not be subject to demand for such service in the foreseeable future. No public benefit would accrue for rural companies who happen to serve a few customers in the top 100 MSAs, and ultimately the rural companies' ratepayers, to incur unnecessary expenses to provide number portability in the absence of a "*bona fide*" request for such service.

The Telephone Number Portability Report and Order (R&O) sets forth a series of mandatory, near-term deadlines, ending December 31, 1998, for all LECs operating in the 100 largest

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<sup>1</sup> NECA is a not-for-profit association that is responsible, under the Commission's rules, for the preparation of access charge tariffs on behalf of over 1,200 telephone companies that do not file separate tariffs; and for the collection and distribution of access charge revenues. *See* 47 C.F.R. §§ 69.603 and 64.604. NECA also administers the interstate Universal Service and Lifeline Assistance programs and the interstate Telecommunications Relay Services (TRS) fund. *See id.*

<sup>2</sup> Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, RM 8535, FCC 96-286 (rel. July 2, 1996) (R&O).

Metropolitan Statistical Areas (MSAs) to deploy long-term number portability.<sup>3</sup> The R&O further requires LECs operating in the smaller MSAs to deploy long-term number portability, beginning after December 31, 1998, within six months after a “specific request.”<sup>4</sup>

In promulgating these rules, the Commission stated that number portability provides consumers flexibility and promotes the development of competition.<sup>5</sup> It stated that its phased deployment schedule is designed to ensure number portability in those regions, the “major metropolitan areas,” where competition is likely to develop soon.<sup>6</sup> The Commission adds that “[i]n those areas beyond the 100 largest MSAs . . . the actual pace of competitive entry into local markets should determine the need for [number] portability.”<sup>7</sup>

NECA has identified 115 study areas of tariff pooling companies, considered “rural telephone companies” under the 1996 Act, which operate in the 100 largest MSAs.<sup>8</sup> Of these 115 study areas, only four have boundaries completely within a top-100 MSA (three of which have less than 1500 access lines each) -- the remaining 111 study areas fall only partially within a top-100 MSA, with

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<sup>3</sup> *Id.* at ¶ 77.

<sup>4</sup> *Id.* at ¶ 80. Such requests should specifically request long-term number portability, identify the discrete geographic area covered by the request, and provide a tentative date six or more months in the future when the carrier expects to need number portability to port prospective customers. *Id.*

<sup>5</sup> These benefits were the two policy reasons the Commission gave for its number portability rules. *Id.* at ¶ 28.

<sup>6</sup> *Id.* at ¶ 82.

<sup>7</sup> *Id.*

<sup>8</sup> Based on 1994 LEC boundary file data from Claritas, Inc., a data and mapping firm; 1990 census block group boundaries from U.S. Census Bureau; and NECA’s July 1995 Tariff 4 data on switch locations.

many overlapping by only a small fraction of their total area and/or customer base. In contrast to other carriers operating in the more-heavily populated areas of the largest MSAs, these rural companies are unlikely to see local exchange competition anytime soon. Thus, requiring these rural companies to deploy number portability without a request unnecessarily imposes significant economic burdens<sup>9</sup> without the benefits of flexibility for consumers or the development of competition.

The R&O appears to suggest that the 1996 Act's Section 251(f) exempts rural telephone companies from the Commission's number portability requirements, but is not completely clear on this point.<sup>10</sup> It implies that the Commission would address "specific application" of this section<sup>11</sup> in its Interconnection Order.<sup>12</sup> This Order, however, does not address whether rural companies operating in the 100 largest MSAs, either wholly or partially, need to deploy number portability even without a request.

Exempting rural telephone companies without a request from number portability requirements would be consistent with Section 251(f). Section 251(f) exempts these companies from the interconnection and network element requirements, arguably precursors for number portability

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<sup>9</sup> See R&O at ¶¶ 81-82; USTA Comments at 9 (Aug. 16, 1996), CC Docket No. 95-116, RM 8535.

<sup>10</sup> *Id.* at ¶ 83. The FCC "note[s] that the 1996 Act exempts rural telephone companies from the 'duty to negotiate . . . the particular terms and conditions of agreements to fulfill the [interconnection] duties' created by the 1996 Act, including the provision of number portability, and that carriers satisfying the statutory criteria contained in section 251(f) may be exempt from the obligations to provide number portability as set forth herein." *Id.*

<sup>11</sup> See *id.*

<sup>12</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, FCC 96-325 (rel. Aug. 8, 1996).

usefulness, until receipt of a *bona fide* request.<sup>13</sup> Even after receipt of a *bona fide* request, a state may continue to exempt a rural company if the request is either unduly economically burdensome, technically infeasible, *or* not consistent with universal service goals.<sup>14</sup> In fact, the 1996 Act's Joint Explanatory Statement specifically notes "that the duties imposed under new section 251(b) [including number portability] make sense only in the context of a specific request from another . . . who actually seeks to connect with or provide services using the LEC's network."<sup>15</sup>

To avoid incurring unnecessary expense which will ultimately be passed on to consumers, NECA respectfully requests expeditious clarification that rural telephone companies are exempt from the Commission's number portability requirements until receipt of a *bona fide* request, pursuant to the 1996 Act's Section 251(f). At a minimum, the Commission should clarify that it exempts from

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<sup>13</sup> See 47 U.S.C. § 251(f)(1).

<sup>14</sup> See *id.*

<sup>15</sup> Telecommunications Act of 1996, H.R. Report 104-458, *Joint Explanatory Statement of the Committee of Conference* at 121.

its number portability requirements, until receipt of a *bona fide* request, those rural telephone companies that serve study areas which only partially overlap a top-100 MSA.

Respectfully submitted,

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ASSOCIATION, INC.

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August 23, 1996

# CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was served this 23rd day of August, 1996, by hand delivery to the persons listed below.

By Perry Goldschein Bmo  
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